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OFFICE OF PETITIONS

In re Application of
Johnson et al.
Application No. 09/881,533
Filed: June 14, 2001
Attorney Docket No. 11221-0011

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed December 12, 2005, to withdraw the holding of abandonment.

On December 23, 2004, the Office mailed a final Office action, which set three-month shortened statutory period to reply. In the apparent absence of a timely and proper response, the Office mailed a Notice of Abandonment on August 23, 2005.

In the present petition, petitioner asserted that a proper response was filed timely in response to the final Office action. In support of the petition, petitioner submitted a copy of a returned, date-stamped postcard receipt, acknowledging receipt of the following: "Appeal notice & Brief in triplicate, Cert. of mailing JFL 2/16/05; Check \$500 for appeal notice & brief; Other return postcard" in the USPTO on February 23, 2005. Petitioner included copies of these documents with this petition.

Initially, the Office notes that the postcard receipt indicated an incorrect Application, No. 09/881,553, instead of No. 09/881,533. Notwithstanding this error, the postcard receipt and the response correctly identified the Docket No. 11221-0011 and the attorney of record. Furthermore, the response correctly indicated the first named inventor, the title, the Art Unit, and the examiner's name. Nonetheless, the USPTO has not located the original documents submitted on February 23, 2005, in either Application Nos. 09/881,553 or 09/881,533.¹

¹ The finance records show that the USPTO received the \$500.00 check and allocated the funds to Application No. 09/881,553.

Section 503 of the MPEP states, "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the response was filed timely in the USPTO on February 23, 2005, but was not matched with the application.

Under current Office procedures, any correspondence that does not contain the proper identification set forth in 37 CFR 1.5(a) will be returned to the sender by OIPE. However, the Office can correct a minor error in the identification of the application provided the correct identification can be quickly discovered. Examples of minor errors are transposed numbers, typographical errors, and listing the parent application number. See MPEP 502. Upon reviewing the postcard receipt and the copies of the documents, it is concluded that there was sufficient information thereon to associate the papers with the present application file.

For the reasons stated above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is **granted**.

The Office finance records will be corrected to indicate that petitioner paid the fees in the amount of \$500.00 for the filing of the Notice of Appeal and the Appeal Brief in Application No. 09/881,533, not Application No. 09/881,553.

This matter is being referred to Technology Center Art Unit 3627.

Any questions related to this decision may be directed to the undersigned at (571) 272-3211. All other questions regarding the status of the application or the examination process should be directed to the Technology Center.

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